

LIB

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
SUBSTANTIAL DEVELOPMENT PERMIT
ISSUED BY CHELAN COUNTY TO
McCLOSKEY'S COVE MARINA,

MR. & MRS. WILLIAM REIERSON,
MARCELLA ASHBAUGH, MR. & MRS.
RON FORSELL, MR. & MRS. M. B.
MCNEIL, MR. & MRS. JACK WHITMAN,
MR. & MRS. CHARLES SARVIS, KEN
ETZKORN, G. DAVIDSON, MR. & MRS.
CAL CHANDLER, DR. & MRS. MERLE
LOUDEN AND MR. & MRS. JOE S.
WELTY, JR.,

Appellants,

v.

CHELAN COUNTY AND McCLOSKEY'S
COVE MARINA,

Respondents.

SHB No. 82-50

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the Request for Review of a substantial development permit for the expansion of a marina, came before the Shorelines Hearings Board, Gayle Rothrock, Chairman, David Akana (presiding),

1 Nancy Burnett and Lawrence Faulk at a hearing in Chelan, Washington on
2 April 12, 1983.

3 Appellants were represented by their attorney, David E. Sonn;
4 respondent permittee was represented by Virgil M. McClosky; respondent
5 county was represented by E. R. Whitmore, Jr., Prosecuting Attorney.
6 Joan Steichen, court reporter, recorded the proceeding.

7 Having heard the testimony, having examined the exhibits, and
8 having considered the post-hearing memoranda and contentions of the
9 parties, the Board makes these

10 FINDINGS OF FACT

11 I

12 McClosky's Cove Marina is a business operated by Virgil McClosky
13 on Lake Chelan. The property is situated on the south shore of the
14 lake, about 12 miles from Chelan.

15 II

16 In 1972 McClosky purchased the remnants of a 50-slip small boat
17 marina which had been damaged in a storm. During the time between
18 then and the application for the permit in question, McClosky repaired
19 the marina, expanded the capacity from 50 to 110 slips, and relocated
20 a fueling station from the shore to a floating dock. Other added
21 improvements to the facility included a log boom, pumpout station,
22 store and restaurant.

23 III

24 Although the county requires building permits for the dock
25 expansion and other improvements in and over the water, it has no

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1 record of granting McClosky permits for them. There was no shoreline
2 substantial development permit issued for any waterward construction
3 until the instant permit was granted.

4 IV

5 On October 23, 1981, McClosky filed application No. CUP 1151 for a
6 marina expansion and other developments in the shoreline area,
7 including a bath house. About that time an environmental checklist
8 was filed and was considered by the planning department in due
9 course. Several changes and additions were noted on the checklist by
10 Rob Salter, a planner. On December 18, 1981, Mr. Salter issued a
11 Declaration of Significance (DS) for the proposal. On December 28,
12 1981, the DS was changed to a proposed Declaration of Non-Significance
13 (DNS). Comments to the proposed DNS were received. After
14 consideration, a final DNS was issued by Mr. Salter on March 8, 1982.

15 On May 10, 1982, the county denied the proposed substantial
16 development described in application No. CUP 1151.

17 V

18 On September 28, 1982, McClosky re-applied for a substantial
19 development permit on application No. CUP 1202. The proposed
20 development was for the expansion of the existing marina from 150 to
21 220 boat slips involving a 250 foot extension of the two main docks,
22 the relocation of the breakwater, the addition of a sanitary pumpout
23 station, and a log boom across the southerly end of the marina. The
24 previously proposed bathhouse facility was omitted. The facility was
25 to be operated throughout the year.

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1 A new environmental checklist was not filed with the application.
2 Instead, the new application referenced the files for application No.
3 CUP 1151 for environmental checklist information.

4 VI

5 Notice of the proposed development was published on October 1 and
6 8, 1982, in "The Wenatchee World." The development was described as:

7 ...improvements to the existing Cove Marina including
8 the expansion of docking and moorage facilities by
9 extending the existing docks approximately 250',
10 relocating the breakwater, and relocating the
11 breakwater (sic); redevelopment of the trailer park
12 and campground; and the operation of a store,
13 restaurant, and repair shop located at the Cove
14 Marina on the south shore....

15 The same notice was mailed to property owners of record within 300
16 feet of the proposed development.

17 VII

18 Notice of a public hearing before the county Board of Adjustment
19 was given which described the proposed action as: "The expansion of
20 the existing marina from 150 to 200 boat slips by extending the main
21 dock and relocating a breakwater and adding a pumpout station."

22 VIII

23 In response to the proposed DNS on December 25, 1981, and to
24 application No. CUP 1202, the county received information relevant to
25 environmental considerations as well as the desirability of the
26 project.

27 The State Department of Game reserved its environmental concerns
for fish and wildlife for other permits, notably the hydraulic permit
and the U.S. Army Corps of Engineers' permit.

IX

Letters opposing and supporting the development were received by the county. A larger marina was deemed desirable by some. Concern for property lines and adverse environmental impacts were expressed by others. Such adverse impacts included gasoline spills, water pollution, boat traffic, aesthetics, navigation and noise.

On December 22, 1981, the Chelan-Douglas Health District responded to the environmental checklist relating to application No. CUP 1151. Concern was expressed for the expansion of the marina by 50 percent and allowing overnight sleeping on boats. An increase in demand for available sewer, water and solid waste facilities was expected. The proposed bathhouse required a new septic system because the existing system was operating at capacity. Water supply facilities would need to be expanded and would need to meet state standards. The solid waste removal program was expected to be augmented over the existing arrangement as a result of the expansion.

In response to application No. 1202, the Health District noted:

The original proposal called for a bathhouse/comfort station to handle the increased traffic, as the existing septic system serving the Rest(aurant)/Motel is already at capacity. This proposal was dropped when no ad(e)quate area could be found for a new septic system. It was then determined that the septic system now serving the two restrooms above the store would serve the increased traffic.

My comments of Dec. 22, 1981 (attached) are applicable to the current proposal, with the exception of the comments on the sewage facility.

X

At its public hearing, the county Board of Adjustment heard citizens speaking in support and opposition to the project.

1 A representative of the Chelan-Douglas Health District stated that
2 there was no increased water pollution in the area surrounding the
3 cove in its present condition.

4 XI

5 The Environmental Checklist does not indicate a requirement for a
6 hydraulics permit or a building permit. With respect to air, water
7 movement, noise, light and glare, existing use, parking facilities,
8 vehicular movement, boat traffic, and aesthetics, the checklist
9 discloses adverse impacts.

10 The checklist was in error when it did not recognize that water
11 pollution would increase with the addition of a substantial number of
12 boats, that there is a "risk" of upset or accident with respect to
13 handling of oil and gasoline, that fire and public services may be
14 affected and that noise from human activities may increase.

15 Finally, the checklist assumes an existing 150 slip marina. The
16 existing marina actually has a 110 slip capacity. The existing marina
17 is allowed, at most, a 50 slip capacity.

18 XII

19 During the years since 1972, the nearby property owners have
20 noticed more disturbance, boat traffic, noise and restriction in
21 navigation, whether for boating or water skiing. Gasoline spills on
22 both land and water were seen. It is likely that these impacts will
23 be continuing and exacerbated unless design and/or mitigating measures
24 are taken which will reduce environmental impacts and respect property
25 interests.

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XIII

McClosky expects to complete the proposed development by 1990. By expanding the facilities during this period, McClosky expects to achieve a certain economy of scale which he believes will make the marina profitable. Whether an expansion of the marina will actually achieve this goal is uncertain.¹ What is certain is that some improvements should be made to the existing facilities, and if for more than 50 boats, should be accomplished under proper permits.²

XIV

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such

From these Findings the Board comes to the following

CONCLUSIONS OF LAW

The Board has jurisdiction over the persons and the subject matter of this proceeding.

II

The instant substantial development permit is reviewed for compliance with the State Environmental Policy Act (SEPA), chapter

1. There is no persuasive evidence in this record which establishes a minimum size marina on Lake Chelan for profitable operation.

Apparently the Cove Marina has never been profitable: "The Marina certainly had problems existing. It was never profitable enough to support itself or keep itself in good repair. The only times it made money was each time it was sold." McClosky, Closing Statement.

2. The SMP prohibits the use, erection, moving, reconstruction, extension, enlargement or alteration of any structure unless in compliance with its provisions. Section 5.2.

1 43.21C RCW and for consistency with the Chelan County Shoreline Master
2 Program (SMP) and the provisions of the Shoreline Management Act.

3 III

4 The public notice given for the proposed development was not shown
5 to be inadequate or misleading.

6 IV

7 The expansion of a 50-slip small boat marina to a 220-slip boat
8 marina is a significant change from the 1972 configuration. The
9 expansion of the existing 110-slip boat marina to a 220-slip boat
10 marina is also a significant change in itself. The attendant adverse
11 environmental impacts, whether from a 50-slip small boat marina or
12 from a 110-slip boat marina, are significant. Under the stated public
13 policy of SEPA there is a reasonable probability that the proposed
14 marina will have more than a moderate effect on the quality of the
15 Cove and nearby area environment. Based on the entire record and the
16 policy of SEPA, the DNS was clearly erroneous.

17 V

18 Although the permit must be vacated and remanded for SEPA
19 compliance, the following observations under the SMA may be useful in
20 future considerations:

- 21 1. Under the SMP, a "rural environment" is any area either
22 characterized by or capable of supporting intensive recreational
23 development. Section 7.2.280.4. The proposed substantial
24 development is consistent with this provision.

2. The SMP allows marinas within a rural environment which can be designed and built "to minimize conflict" with other permitted uses. Section 19.21.1. The proposed expansion should be redesigned to minimize conflict rather than create it. The present interference with the use of the water of adjacent property owners relating to water skiing, use or blocking of adjacent docks, and the accompanying reduction or restriction to navigation can be eliminated by a better design.
3. Condition 4 of the permit is not specific with respect to the design of the facility. Where a permit does not adequately portray the development, it is not possible to evaluate the design. In this instance, it is not possible to state whether the development is consistent with Sections 19.1.2 and 19.2.2 of the SMP.
4. Condition 5 of the permit is not specific with respect to fuel handling and storage, and precautions and methods to be used. Therefore, the development cannot be properly evaluated under Sections 19.1.2 and 19.2.2, and page 12, paragraph 8 of the SMP.
5. Although Condition 2 of the permit requires off street parking, there is no indication as to where the parking will be located. Sections 19.1.2 and 19.2.2 of the SMP.

V

In summary, the Board concludes that appellants have shown that an EIS should have been prepared (Issue No. 1, Stipulation on Prehearing Conference).

1 Although not necessary for the decision in light of the foregoing,
2 the Board concludes that appellants have shown that the substantial
3 development, as proposed, would be inconsistent with the Chelan SMP.
4 (Portions of Issue No. 2, Stipulation.) However, a redesigned marina
5 expansion could be consistent with the SMP. Appellants did not show
6 that the county erred with respect to Issues 2(c, 1, k, l) of the
7 stipulated issues.

8 VI

9 The permit should be vacated and the matter remanded for further
10 proceedings.

11 VII

12 Any Finding of Fact which should be deemed a Conclusion of Law is
13 hereby adopted as such.

14 From these Conclusions the Board enters this
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ORDER

Substantial Development Permit No. CUP 1202 is vacated and the matter is remanded for further proceedings.

DATED this 27th day of May, 1983.

SHORELINES HEARINGS BOARD

David Akana

DAVID AKANA, Lawyer Member

Gayle Rothrock

GAYLE ROTHROCK, Chairman

Nancy R. Burnett

NANCY R. BURNETT, Member

Lawrence J. Paulk

LAWRENCE J. PAULK, Member